IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL NO. 35 OF 2002
In
COMPANY PETITION NO. 131 OF 1989

With

CIVIL APPLICATION NO. 132 OF 2002
In
O.J.APPEAL NO. 35 OF 2002

With

O.J.APPEAL NO. 37 OF 2002
In
COMPANY PETITION NO. 69 OF 1990
To
O.J.APPEAL NO. 59 OF 2002
In
COMPANY PETITION NO. 51 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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S.L.M. INDUSTRIES LTD. (FORMERLY SLM MANEKLAL LTD.) - Appellant(s)

Versus

RAJENDRA ELECTRICAL INDS. LTD. - Respondent(s)

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Appearance :

MR. R.S. SANJANWALA for the Appellant(s).
NONE for the Respondent(s).
MR. A.V. TRIVEDI for MR. ANIP A. GANDHI for the Respondent in O.J.A. No.42/2002

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/02/2006

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. At the first call, Mr.R.S.Sanjanwala, learned Counsel appeared for the appellants; none appeared for respondent though the name of Mr.K.V.Shelat, learned Counsel, appears in the Cause List. Similarly, though name of Mr.Anip A. Gandhi, learned Counsel for the respondent in O.J.A. No.42 of 2002, is shown, but, he was also not present.

2. On the second call, Mr.Sanjanwala appeared, but, none appears for the respondents. Before we could proceed to dictate the order, Mr.A.V.Trivedi, learned Counsel, submitted that he would be appearing under the authority of Mr.Anip A. Gandhi, learned Counsel in O.J.A. No.42 of 2002.

3. Number of Company Petitions were filed against the present appellants – S.L.M. Industries Limited. The petitions remain pending for some time and when the matters came up at the admission stage, the parties were heard and by the impugned Order dated 12th September, 2002 passed in Company Petition No.131 of 1989 and the connected group matters, the Company Court, without admitting the petitions, taking into consideration the Board's opinion formed under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 [for short `SICA'] straightaway allowed the Company Petitions, directed winding up of the appellant-Company and also appointed

an Official Liquidator to take possession of the properties of the Company. Being aggrieved by the said order, directing winding up of the Company, the appellant-Company is before this Court with twofold submissions.

4. Mr.R.S.Sanjanwala, learned Counsel for the appellants, submits that as the Board, constituted under the provisions of the SICA, has forwarded its opinion to the High Court of Bombay, then, the Bombay High Court only would have jurisdiction to pass orders after taking into consideration the Board's opinion. The submission is that during the pendency of these Company Petitions, the appellant had changed its registered office, which was earlier within the jurisdiction of this Court, to a place which falls within the jurisdiction of the Bombay High Court. He submits that the Board, after change of the registered office, if has sent its opinion to the Bombay High Court, then, in accordance with Section-20 of the SICA, the Bombay High Court alone would have jurisdiction to direct winding up of the Company. His further submission is that if the Board has not forwarded its opinion to this Court, then, Board's opinion could not be taken into consideration, nor could it provide foundation for directing winding up of the appellant-Company. His further submission is that *de hors* the order/Board's opinion if this Court finds that it has jurisdiction, then, it has to admit the petitions, advertise the same, invite claims and objections and then, pass a final order of winding up. His submission is that the procedure followed and adopted by the learned single Judge is in breach

of the provisions of Rule-96 of the Company Court Rules, 1956 and other provisions of the Companies Act, 1956.

5. We have already recorded that except Mr.Trivedi, none appears for the petitioning creditors. Mr.Trivedi submits that *de hors* the opinion of the Board, the learned single Judge/Company Judge could proceed to admit the matters and could also pass a final order of winding up in view of the concession made by the learned Counsel for the Company. His submission is that assuming that the learned single Judge has relied upon the Board's opinion and the same was wrong, then, too, the Board's opinion would be a relevant factor for the purposes of directing winding up, on the allegations made in the Company Petitions and the concession made by the Company's Counsel in the open Court. He submits that the learned single Judge was absolutely justified in observing that it had jurisdiction to proceed with the matters and was also justified in issuing the winding up order directly.

6. Section-433 of the Companies Act, 1956 says that the Company may be wound up by the Court under particular circumstances. Section-439 of the Act provides that an application to the Court for the winding up of a Company, shall be by petition presented, subject to the provisions of this section, by particular person/s, who is/are interested in winding up of the Company. The Company Petition is required to be filed in a Court within whose jurisdiction the registered Office of the Company is situate. Section 10 of the Companies

Act reads as under:

> "10. (1) The Court having jurisdiction under this Act shall be -
>
> (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and
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> (b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.
>
> (2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -
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> (a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;
>
> (b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of the companies.
>
> (3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

From a bare perusal of Section-10, it would clearly appear that any High Court, which has jurisdiction in relation

to the place at which the registered Office of the Company concerned is situate, shall have jurisdiction to entertain the petition. Sub.Section-3 of Section-10 clearly provides that for the purposes of jurisdiction to wind up Companies, the expression “registered office” means the place which has longest been the registered office of the Company during the six months immediately preceding the presentation of the petition for winding up.

7. We had put a pointed question to Mr.Sanjanwala that on the date of filing of these company Petitions, whether the Gujarat High Court had jurisdiction or not and whether the Company had its registered office within the jurisdiction of this Court for last six months or more, Mr.Sanjanwala fairly conceded that on the date of submission of the Company Petitions, the Court had jurisdiction.

8. Mr.Sanjanwala submits that the issue simply would be that whether the Court could rely upon the Board's opinion for the purposes of passing a final winding up order without formally admitting the petitions and advertising the same.

9. Section 15 of the SICA provides that when an industrial company has become a sick industrial Company, the Board of Directors of the Company, shall, within sixty days from the date of finalisation of the duly audited accounts of the Company for the financial year as at the end of which the Company has become a sick industrial Company, make a reference

to the Board for determination of the measures, which shall be adopted with respect to the Company. If such a reference is made, then, Section 16 comes into operation and an inquiry into the working of the sick industrial Company has to be made. Section-17 of the SICA talks about the powers of the Board to make suitable order on the completion of the inquiry. Under Section-18, the Board is authorised to prepare and sanction some Schemes for revival of the Company or so. Once such a Scheme is sanctioned, then, under Section-19, the Board still has jurisdiction and authority to issue directions to some of the financial institutions to provide financial assistance. Under Section-20, the Board is authorised to record its opinion that it would be just, proper and equitable to direct winding up of the Company. After recording such an opinion, it shall forward the opinion to the concerned High Court. Though the word “High Court” has not been defined in the SICA, but, Sub.Section-2 of Section-3 provides that the words and expressions used and not defined in this Act shall have the meanings, if any, respectively assigned to them in the Companies Act, 1956 (1 of 1956). For appreciating which would be the concerned High Court, we will have to adopt the definition from the Companies Act and in relation to the jurisdiction, we again will have to refer to Section-10 of the Companies Act. Clause-(b) of Sub.Section-(2)of Section-3 of the SICA further provides that the words and expressions used but not defined either in the SICA or in the Companies Act, 1956, shall have the meanings, if any, respectively, assigned to them in the Industries (Development and Regulation) Act, 1951.

10. Section-3(cc) of the Industries (Development and Regulation) Act, 1951 says that High Court means the High Court having jurisdiction in relation to the place at which the registered office of the Company is situate. In the present matter, for the purposes of entertaining the Company Petitions, on the date of filing of the Company Petitions, this Court undisputedly had the jurisdiction. The office of the Company was registered and the Company was working within the State of Gujarat for more than six months or so before the Company Petitions were filed against it. If the registered office would decide the question of jurisdiction, then, undisputedly, the cause of action for filing the Company Petition accrued in favour of the petitioning creditors within the territorial jurisdiction of this High Court.

11. According to the learned Counsel for the appellants, if during pendency of these appeals or Company Petitions, the registered office was changed and the concerned Board referred its opinion to the Bombay High Court, where the registered office is situate, then, it would only be the Bombay High Court, which shall have jurisdiction to consider the Board's opinion.

At this stage, we are not required to enter into that controversy because the Company Court had jurisdiction to proceed with the matter on the date of institution of the Company Petitions and even if the Board's opinion is not taken

into consideration, then too, in light of the allegations made against the appellants and the concession made by their Counsel before the learned Company Judge, an order could be passed. To be fair to the respondents, we must refer what has been observed by the learned single Judge in his impugned order. The relevant part of paragraph-4 of the impugned order reads as under:

> "At the outset, it may be stated that learned counsel Shri Manish Bhatt for respondent-company straightaway conceded that when they are not able to start the company, then there is no option for the court but to pass winding up order of the company.
> ... ..."

12. We asked Mr.Sanjanwala that what is the status of the Board's opinion in the Bombay High Court, to which Mr.Sanjanwala stated that the matter is still pending. We enquired from him that has anybody including the Company, or anybody at the instance of the Company, including the beneficiary or an employee, challenged the Board's opinion before the competent Court, to this Mr.Sanjanwala submitted that to the best of his knowledge, nobody has challenged the Board's opinion before any competent Court and the Company itself has not taken an exception to the Board's opinion.

13. From the order of the learned single Judge, it appears that in light of the concession made before him and the Board's opinion, which was not challenged by anybody, instead of admitting the matters, he proceeded to pass an order of

winding up of the Company.

14. In our considered opinion, change of the office/change of the registered office of the Company during the pendency of the Company Petitions, would not oust the jurisdiction of the High Court, which had the jurisdiction to entertain the matter at the time of institution of the Company Petitions. If simple change of registered office of the Company would decide the jurisdiction of the Company Court, then, it is likely to create a havoc and would give a handle in the hands of the Company. Before the matters are finally heard or are admitted, the Company may change its registered office and would always raise an objection that the Court has lost its jurisdiction. Unscrupulous action on the part of the Company cannot be ruled out. A Company cannot be given such a handle to contend before the Competent Court, nor can be allowed to raise such an objection that during the pendency of the Company Petitions, it has changed its registered office, therefore, the Court has lost its jurisdiction.

15. Even assuming for the sake of arguments, but, not deciding the question finally, we hold that the Board's opinion could not provide an absolute foundation for directing winding up of the Company, then too, we must observe that the Board's opinion would be relevant and it would still have the persuasive value. If in the Board's opinion, the Company cannot revive itself, the Board finds that it must be wound up and if the Company is not aggrieved by such a finding recorded against

its interest, then, all these facts would be relevant. In our considered opinion, the Company Court, on the date of institution of the Company Petitions, so also, on the date of passing of the impugned Order dated 12th September, 2002, had jurisdiction in the matters; we reject the objection relating to the jurisdiction.

16. The second submission made by Mr.Sanjanwala, in our considered opinion, deserves to be considered in its true spirit. According to him, Rule-96 of the Companies (Court) Rules, 1959 is required to be observed before passing a winding up order. Rule-95 relates to a petition for winding up, while Rule-96 relates to admission of the petition and directions as to advertisement. Upon filing of the petition, the matter shall be posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. The rule further provides that the Judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition. Rule 96 is not a simple procedure. In fact, it is of substantive nature. On one side it protects the Company from the hands of the fraudulent creditors and at the same time, provides a protective umbrella to number of persons to oppose winding up if the Company Petition has been filed by somebody projecting himself to be a creditor in connivance or collusion with the Company. A possibility of a collusive petition cannot be ruled

out in a case where the Company is unable to discharge its debts. At the same time, a running Company, which can survive its life, is required to be protected from the onslaught made by the unscrupulous people. Rule-96 if directs that the matter be heard by the learned company Judge and if it is admitted, then, the hearing is to be advertised, then, such direction contained in Rule-96 cannot be ignored.

17. In our opinion, the learned single Judge, though was absolutely justified in observing that it had jurisdiction to entertain the petitions and pass an order of winding up, went a little wrong in passing the final winding up order without admitting the petitions. The direction of winding up, for the reasons stated above, deserves to and is accordingly quashed. Instead, we direct admission of all the Company Petitions and further direct that the date of hearing be advertised and the matters may be heard by the learned single Judge after giving due opportunity to the parties.

As the petitions are of the year 1989, we hereby direct the Registry to place all these Company Petitions before the learned Company Judge on 17th March, 2006. The learned Company Judge shall proceed in accordance with the procedure provided in Rule-96 of the Companies (Court)Rules, 1959. The appeals to the extent indicated above are allowed. No orders as to costs.

18. In view of disposal of the main appeals, Civil

Application No.132 of 2002 does not survive and the same is disposed of accordingly. Rule is discharged. Interim relief granted earlier shall stand vacated.

[R.S.Garg, J.]

[Bankim N. Mehta, J.]

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